

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

DENT WIZARD INTERNATIONAL )  
CORPORATION, a Delaware corporation, )  
Plaintiff, )  
vs. ) Case No. 4:06CV00492 ERW  
DARYL STERNER, )  
and )  
C.B.P.S., Inc., a Nevada corporation, )  
Defendants. )

**MEMORANDUM AND ORDER**

This matter comes before the Court upon Plaintiff's Motions in Limine [doc. #67 and #74] and Plaintiff's Motion for Sanctions and for Default Judgment [doc. #72]. A hearing was held on August 28, 2007, and the Court heard arguments from the parties on the Motions.

Plaintiff, a corporation with its principal place of business in St. Louis, Missouri, filed the present action against Sterner, a former Dent Wizard employee, and CBPS, Inc., a corporation incorporated by Defendant Sterner in March, 2003. Plaintiff's amended complaint seeks damages under nine separate counts. In general terms, these counts allege that Defendant Sterner violated the terms of the Employment Agreement and the Secrecy Agreement. Defendant Sterner has counterclaimed for damages resulting from breach of the duty of good faith and fair dealing.

Defendants have failed to serve upon Plaintiff, or this Court, any pretrial compliance. The parties deadline for the exchange of pretrial materials was August 16, 2007. However, Defendants' former attorney moved to withdraw, and that motion was granted on August 8,

2007. Entry of Appearance by John T. Yarbough as counsel for Defendants was not filed until August 23, 2007. In the interim, Defendants proceeded pro se.

A district court has broad discretion in imposing sanctions. Everyday Learning Corp. v. Larson, 242 F.3d 815 (8th Cir. 2001). District courts may refuse to allow the party to support or oppose certain claims or defenses, prohibit the introduction into evidence of designated matters, strike out pleadings, dismiss the action, or even render a default judgment against the party. Fed. R. Civ. P. 37. Additionally, a court may require the party to pay for expenses reasonably incurred by the opposing party. Fed. R. Civ. P. 16.

The Court concludes under the facts and circumstances of this case that granting default judgment is inappropriate. However, the Court expects all parties to comply with the Federal Rules of Civil Procedure and the Federal Rules of Evidence in the trial of this case. Defendants' failure to comply with the Court's pretrial order may result in exclusion of evidence. The Court will consider evidentiary rulings either when the evidence is presented or upon presentment of motions in limine.

The Court will carefully consider all evidence in support of Defendants' affirmative defenses to determine the prejudicial effect to the Plaintiff at the time any evidence in support of any affirmative defense is offered.

Defendants have failed to comply with pretrial orders and Plaintiff has been unduly prejudiced by Defendants' failures as Plaintiff is unable to properly prepare a defense or defenses to Defendants' counterclaims.

Accordingly,

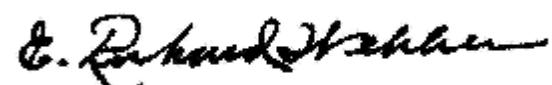
**IT IS HEREBY ORDERED** that Plaintiff's Motion for Sanctions [doc. #72] is **DENIED** **in part and GRANTED in part.** Plaintiff's Motion is **GRANTED** as it pertains to striking the remaining counts of Defendants' Counterclaims. Plaintiff's Motion is **DENIED** as it pertains to entering a default judgment, striking Defendants' Affirmative Defenses, prohibiting Defendants from entering any documents into evidence, prohibiting Defendants from calling any witnesses, or limiting Defendants from anything at trial other than opposing Plaintiff's case in chief.

**IT IS FURTHER ORDERED** that any documents or jury instructions Defendants cares to use at trial must be provided to Plaintiff's counsel and electronically filed with the Court on or before **Friday, August 31, 2007 at 4:00 p.m.**

**IT IS FURTHER ORDERED** that Plaintiff's Motion in Limine [doc. #67] is **GRANTED.**

**IT IS FURTHER ORDERED** that Plaintiff's Motion in Limine [doc. #74] is **GRANTED.**

So Ordered this 29th day of August, 2007.



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E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE